



[Billing Code: 6750-01S]

**FEDERAL TRADE COMMISSION**

**16 CFR Part 433**

**RIN 3084-AB16**

**Rules and Regulations under the Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses**

**AGENCY:** Federal Trade Commission.

**ACTION:** Request for public comments.

**SUMMARY:** The Federal Trade Commission ("Commission") requests public comment on the overall costs and benefits, and regulatory and economic impact, of its Rules and Regulations under the Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses, commonly known as the "Holder Rule," as part of the agency's regular review of all its regulations and guides.

**DATES:** Written comments must be received on or before February 12, 2016.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Holder Rule Review, FTC File No. P164800" on your comment. You may file your comment online at <https://ftcpublic.commentworks.com/ftc/holderrule> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary,

Constitution Center, 400 7th Street, SW, 5th Floor Suite 5610 (Annex B), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Rosenthal (202) 326-3332, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On November 14, 1975, the Commission promulgated its Trade Regulation Rule concerning the Preservation of Consumers' Claims and Defenses. The Holder Rule protects consumers who enter into credit contracts with a seller of goods or services by preserving their right to assert claims and defenses against any holder of the contract, even if the original seller subsequently assigns the contract to a third-party creditor or assignee. It requires sellers that arrange for or offer credit to finance consumers' purchases to include the following Notice in their contracts:

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED . . . WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.<sup>1</sup>

A creditor or assignee of the contract is thus subject to any claims or defenses that the consumer could assert against the seller.

**II. Regulatory Review Program**

The Commission periodically reviews all of its rules and guides. These reviews

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<sup>1</sup> 16 CFR § 433.2.

seek information about the costs and benefits of the agency's rules and guides, and their regulatory and economic impact. The information obtained assists the Commission in identifying those rules and guides that warrant modification or rescission. Therefore, the Commission now solicits comments on, among other things, the economic impact of and the continuing need for the Holder Rule; possible developments in the case law that need to be reflected in the Holder Rule; and the effect on the Holder Rule of any regulatory, technological, economic, or other industry changes.

### **III. Request For Comment**

The Commission solicits comment on the following specific questions related to the Holder Rule:

- (1) Is there a continuing need for the Holder Rule as currently promulgated? Why or why not?
- (2) What benefits has the Holder Rule provided to consumers? What evidence supports the asserted benefits?
- (3) What modifications, if any, should the Commission make to the Holder Rule to increase its benefits to consumers?
  - (a) What evidence supports the proposed modifications?
  - (b) How would these modifications affect the costs and benefits of the Holder Rule for consumers?
  - (c) How would these modifications impact businesses, particularly small businesses?
- (4) What impact has the Holder Rule had on the flow of truthful information to consumers and on the flow of deceptive information to consumers?

- (5) What significant costs, if any, has the Holder Rule imposed on consumers? What evidence supports the asserted costs?
- (6) What modifications, if any, should be made to the Holder Rule to reduce any costs imposed on consumers?
- (a) What evidence supports your proposed modifications?
  - (b) How would these modifications affect the costs and benefits of the Holder Rule for consumers?
  - (c) How would these modifications affect the costs and benefits of the Holder Rule for businesses, particularly small businesses?
- (7) What benefits, if any, has the Holder Rule provided to businesses, and in particular to small businesses? What evidence supports the asserted benefits?
- (8) What modifications, if any, should be made to the Holder Rule to increase the benefits to businesses, and particularly to small businesses?
- (a) What evidence supports your proposed modifications?
  - (b) How would these modifications affect the costs and benefits of the Holder Rule for consumers?
  - (c) How would these modifications affect the costs and benefits of the Holder Rule for businesses?
- (9) What significant costs, if any, including costs of compliance, has the Holder Rule imposed on businesses, particularly small businesses? What evidence supports the asserted costs?
- (10) What modifications, if any, should be made to the Holder Rule to reduce the costs imposed on businesses, and particularly on small businesses?

- (a) What evidence supports your proposed modifications?
  - (b) How would these modifications affect the costs and benefits of the Rule for consumers?
  - (c) How would these modifications affect the costs and benefits of the Holder Rule for businesses?
- (11) What evidence is available concerning the degree of industry compliance with the Holder Rule? Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?
- (12) Are any of the Holder Rule's requirements no longer needed? If so, explain. Please provide supporting evidence.
- (13) What modifications, if any, should be made to the Holder Rule to account for changes in relevant technology or economic conditions?
- (a) What evidence supports the proposed modifications?
  - (b) How would these modifications affect the costs and benefits of the Holder Rule for consumers and businesses, particularly small businesses?
- (14) Does the Holder Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?
- (a) What evidence supports the asserted conflicts?
  - (b) With reference to the asserted conflicts, should the Holder Rule be modified? If so, why, and how? If not, why not?
- (15) Are there foreign or international laws, regulations, or standards with respect to the products or services covered by the Holder Rule that the Commission should consider as it reviews the Holder Rule? If so, what are they?

(a) Should the Holder Rule be modified in order to harmonize with these foreign or international laws, regulations, or standards? If so, why, and how? If not, why not?

(b) How would such harmonization affect the costs and benefits of the Holder Rule for consumers and businesses, particularly small businesses?

#### **IV. Instructions for Submitting Comments**

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 12, 2016. Write “Holder Rule Review, FTC File No. P164800” on your comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which is . . . privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you must follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comments to be withheld from the public record. Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/holderrule>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “Holder Rule Review, FTC File No. P164800” on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor Suite 5610 (Annex B), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the

collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before February 12, 2016. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <http://www.ftc.gov/ftc/privacy.htm>.

By direction of the Commission.

Donald S. Clark  
Secretary.

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